

**BEFORE THE DEPARTMENT OF  
NATURAL RESOURCES AND CONSERVATION  
OF THE STATE OF MONTANA**

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<b>IN THE MATTER OF CHANGE</b>	)	
<b>APPLICATION NO. 43D-30005215 BY</b>	)	<b>FINAL ORDER</b>
<b>PAUL A. PILATI</b>	)	

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Pursuant to the Montana Water Use Act and to the contested case provisions of the Montana Administrative Procedure Act, and after notice required by Mont. Code Ann. § 85-2-307, a hearing was held on August 1, 2007, in Billings, Montana, to determine whether Application to Change a Water Right No. 43D-30005215 by Paul A. Pilati should be approved under the criteria set forth in Mont. Code Ann. § 85-2-402.

**APPEARANCES**

Applicant Paul A. Pilati appeared at the hearing *pro se*. Julius Pilati testified on behalf of applicant Paul A. Pilati. Objector Larry Luloff appeared *pro se*. Ed Draper testified on behalf of objector Larry Luloff.

**EXHIBITS**

Objector Luloff offered and the Hearing Examiner admitted the following exhibits at the hearing:

**Objector's Exhibit L-1** is a copy of a deed conveying property in the SE1/4 Sec. 33, T7S, R20E from C.C. and Elma Bowlen to James A. Virtue.

**FINDINGS OF FACT**

**General**

1. Application to Change Water Right No. 30005215 in the name of Paul A. Pilati was filed with the Department on February 14, 2003. (Department File)
2. This application, Application to Change a Water Right No. 43D-30005215 proposes to change the place of use for water right Statement of Claim No. 43D-197636. The General Abstract for Statement of Claim 43D-197636 describes this right as a decreed right with a priority date of June 1, 1891. (Department File)

3. The existing place of use for this Statement of Claim is listed as 67.5 acres in the NW Sec. 5, and 83.75 acres in the NE Sec. 5, T8S, R20E, all in Carbon County, Montana for a total of 151.25 acres. The existing point of diversion for Statement of Claim No. 43D-197636 is listed as being a headgate in the NENWNW Sec. 7, T8S, R20E and the means of diversion is the McDonald Ditch. The maximum flow rate listed for this Statement of Claim as decreed by the Water Court in Basin 43D is 1.88 cfs (75.20 miner's inches) without indicating a maximum volume other than the Water Court statement "the total volume of this water right shall not exceed the amount put to historical and beneficial use." The period of use for this claim is listed as May 15 to October 19 (156 days). (Department File, Abstract of Claim 43D-197636)
4. Application to Change a Water Right No. 43D-30005215 proposes to change the place of use of 58 miner's inches of water under Statement of Claim No.43D-197636. The Application to Change states that approximately 117 acres will be taken out of irrigation in the N2 Sec. 5, T8S, R20E, and the water previously dedicated to that acreage will be used for irrigation on 22 acres in the W2SESE Sec. 32, T8S, R20E. (Application, Department File)
5. The Environmental Assessment (EA) prepared by the Department for this Change Application was reviewed and is included in the record of this proceeding. The EA concludes that no significant environmental impacts were identified and that no EIS is required. (Department File)
6. A public notice describing facts pertinent to this Change Application was published in the *Carbon County News*, a newspaper of general circulation, printed and published on December 30, 2004, and was mailed to persons listed in the Department file on December 23, 2004. (Department File)

### **Historical Use**

7. The abstract of claim for Statement of Claim No. 43D-197636 lists a maximum flow rate of 1.88 cfs for the purpose of irrigation on 151.25 acres in the NE and NW Sec. 5, T8S, R20E (more particularly described above) from West Fork Rock Creek with a period of diversion from May 15 to October 19. The Statement of Claim as decreed by the Water Court in a temporary preliminary decree states that the maximum volume of this water right "shall not exceed the amount put to historical beneficial use." (Abstract of Claim No. 43D-197636)

8. Applicant states that “I will be using no more water than has been used historically.” (Supplement to Application)
9. In response to a Department request for more information, the applicant states “[t]he original water right ... in the amount of 75 miner’s inches ... 1.88 cfs volume at 563 AF was utilized on 151.25 acres ...” (Department File, Applicant’s letter dated 11/3/04)
10. There is no other evidence in the record describing or estimating the volume of water put to actual historic beneficial use on the 151.25 acres listed in Statement of Claim 43D197636. (Department File, Hearing Record)

**Adverse Effect**

11. Applicant has not identified any water users above the historic place of use or below the proposed place of use. (Application File, Hearing Record)
12. Applicant states that 117 acres will be taken out of irrigation in the N2 Sec. 5, T8S, R20E, and the water previously used on that parcel, in the amount of 58 miner’s inches up to 439.14 acre feet (58 miner’s inches X 156 days = 448.8 acre-feet) will now be used to the north, on the other side of McDonald Ditch on 22 acres in the W2SESE Sec. 32, T8S, R20E. The Statement of Claim for this water right indicates a place of use consisting of 151.25 acres in the N2 Sec. 5, T8S, R20E leaving approximately 34.25 acres remaining as irrigated at the old place of use. Applicant explains that the remaining water (approximately 17 miner’s inches) will be used on 20 acres now owned by a Coby D. and Kathy H Thiede. The Thiede property is apparently a portion of the original place of use which applicant describes as 33.76 acres for Statement of Claim 43D-197636 (but is not a part of this application). (Department File, Application, Supplements to Application)
13. The record does not contain any description or analysis of the actual historic use (of either diverted volume or consumptive use) of Statement of Claim No. 43D-197636. (Department File, Hearing Record)

**Means of Diversion**

14. Applicant proposes to continue using the McDonald Ditch and existing headgate for this change application. (Application, Hearing Record)
15. The record does not describe the size or capacity of the headgate or ditch proposed to be used for irrigation at the new place of use, but applicant describes the irrigation system from the McDonald Ditch as being a pump

with a two inch pipeline serving seven sprinklers moved by a portable extension line. (Department File, Hearing Record)

### **Beneficial Use**

16. Applicant proposes to utilize 58 miner's inches up to approximately 439.14 acre feet to irrigate 22 acres in the W2SESE Sec. 32, T8S, R20E.  
(Application, Supplement to Application)
17. The use of water for irrigation is a beneficial use. (MCA § 85-2-102(2))

### **Possessory Interest**

18. Applicant has provided deeds demonstrating his possessory interest in the W2SESE Sec. 32, T8S, R20E.

## **CONCLUSIONS OF LAW**

### **General**

1. The Department has jurisdiction to approve a change in appropriation right if the appropriator proves, by a preponderance of the evidence, the applicable criteria in Mont. Code Ann. § 85-2-402. For the instant application the requirements of Mont. Code Ann. § 85-2-402(2)(e,f,g) are not applicable because the proposed change does not involve salvage water and no water quality objections were received. (Finding of Fact 2, Department File)
2. Montana Code Annotated § 85-2-402(2) states, inter alia, and as applicable to the instant application:  

Except as provided in subsections (4) through (6), (15), and (16), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of the evidence that the following criteria are met:

  - a. The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.
  - b. Except for a lease authorization pursuant to 85-2-436 or a temporary change in appropriation right authorization to maintain or enhance streamflows to benefit the fishery resource pursuant to 85-2-408, the proposed means of diversion, construction, and operation of the appropriation works are adequate.
  - c. The proposed use of water is a beneficial use.
  - d. Except for a lease authorization pursuant to 85-2-436 or a temporary change in appropriation right authorization pursuant to 85-2-408, the applicant has a possessory interest, or the written consent of the person

with the possessory interest, in the property where the water is to be put to beneficial use.

3. The public notice requirement of Mont. Code Ann. § 85-2-307 has been met. (Finding of Fact 6)

#### **Adverse Effect**

4. Applicant has not proven by a preponderance of the evidence that there will be no adverse affect the use of existing water rights of other persons. In an application for a change in a water right, there must be some evidence of the actual historic use made of the water right.

The applicant in a change proceeding in Montana must prove the historic beneficial use of the water to be changed, no matter how recently the water right was decreed in Montana's adjudication. The DNRC in administrative rulings has held that a water right in a change proceeding is defined by actual beneficial use, not the amount claimed or even decreed. In the Matter of Application for Change Authorization No. G(W)028708-41I by Hedrich/Straugh/Ringer, Final Order, (1991); In the Matter of Application for Change Authorization No. G(W)008323-g76L by Starkel/Koester, Final Order, (1992). Although since Montana started its general statewide adjudication there is no Montana Supreme Court case on point to support the conclusion that even water rights as decreed in final decrees will be limited in change proceedings to their historical use, that conclusion is supported by the case of McDonald v. State, , 220 Mont. 519, 722 P.2d 598 (1986). As a point of clarification, a claim filed for an existing water right in accordance with Mont. Code Ann. § 85-2-221 constitutes *prima facie* proof of the claim for the purposes of the adjudication pursuant to Title 85, Chapter 2, Part 2. The claim does not constitute *prima facie* evidence of historical use for the purposes of a change in appropriation proceeding before the Department under Mont. Code Ann. § 85-2-402.

*In the Matter of Application No. 76H-30009407 to Change Water Right Nos. 76H-108722 and 76H-108773 by North Corporation - Final Decision.*

In a change proceeding, it must be emphasized that other appropriators have a vested right to have the stream conditions maintained substantially as they existed at the time of their appropriations. Spokane Ranch & Water Co. v. Beatty, 37 Mont. 342, 96 P. 727 (1908); Robert E. Beck, 2 Waters and Water Rights § 14.04(c)(1) (1991 edition); W. Hutchins, Selected Problems in the Law of Water Rights in the West 378 (1942). Montana's change statute reads in part:

85-2-402. (2) ... the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) *The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons* or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.

....

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section

(italics added).

Montana's change statute simply codifies western water law.<sup>1</sup> One commentator describes the general requirements in change proceedings as follows:

Perhaps the most common issue in a reallocation [change] dispute is whether other appropriators will be injured because of an increase in the consumptive use of water. Consumptive use has been defined as "diversions less returns, the difference being the amount of water physically removed (depleted) from the stream through evapotranspiration by irrigated crops or consumed by industrial processes, manufacturing, power generation or municipal use." "Irrigation consumptive use is the amount of consumptive use supplied by irrigation water applied in addition to the natural precipitation which is effectively available to the plant."

An appropriator may not increase, through reallocation [change] or otherwise, the actual historic consumptive use of water to the injury of other appropriators. In general, any act that increases the quantity of water taken from and not returned to the source of supply constitutes an increase in historic consumptive use. As a limitation on the right of reallocation, historic consumptive use is an application of the principle that appropriators have a vested right to the continuation of stream

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1. Although Montana has not codified the law in the detail Wyoming has, the two states requirements are virtually the same. Wyo. Stat. § 41-3-104 states:

2. When an owner of a water right wishes to change a water right ... he shall file a petition requesting permission to make such a change .... The change ... may be allowed provided that the quantity of water transferred ... shall not exceed the amount of water historically diverted under the existing use, nor increase the historic rate of diversion under the existing use, nor increase the historic amount consumptively used under the existing use, nor decrease the historic amount of return flow, nor in any manner injure other existing lawful appropriators.

conditions as they existed at the time of their initial appropriation.  
Historic consumptive use varies greatly with the circumstances of use.

Robert E. Beck, 2 Water and Water Rights at § 14.04(c)(1)(b), pp. 14-50, 51 (1991 edition).

In Pueblo West Metropolitan District v. Southeastern Colorado Water Conservancy District, 717 P.2d 955 (Colo. 1986), the court held:

[O]nce an appropriator exercises his or her privilege to change a water right ... the appropriator runs a real risk of *requantification of the water right based on actual historical consumptive use*. In such a change proceeding a junior water right ... which had been strictly administered throughout its existence would, in all probability, be reduced to a lesser quantity because of the relatively limited actual historic use of the right.  
(italics added).

See also 1 Wells A. Hutchins, Water Rights and Laws in the Nineteen Western States, at 624 (1971)(changes in exercise of appropriative rights do not contemplate or countenance any increase in the quantity of water diverted under the original exercise of the right; in no event would an increase in the appropriated water supply be authorized by virtue of a change in point of diversion, place of use, or purpose of use of water); A. Dan Tarlock, Law of Water Rights and Water Resources, at § 5:78 (2007)(“A water holder can only transfer the amount that he has historically put to beneficial use.... A water holder may only transfer the amount of water consumed. The increment diverted but not consumed must be left in the stream to protect junior appropriators. Consumption is a function of the evapotranspiration of the appropriator’s crops. Carriage losses are usually added to the amount consumed by the crops.”); Colo. Rev. Stat. § 37-92-301(5)(in proceedings for a reallocation [change], it is appropriate to consider abandonment of the water right).

The requirements of Montana’s change statute have been litigated and upheld in In re Application for Change of Appropriation of Water Rights for Royston, 249 Mont. 425, 816 P.2d 1054 (1991)(applicant for a change of appropriation has the burden of proof at all stages before the Department and courts, and the applicant failed to meet the burden of proving that the change would not adversely affect objectors' rights; the application was properly denied because the evidence in the record did not sustain a conclusion of no

adverse effect and because it could not be concluded from the record that the means of diversion and operation were adequate).

Prior to the enactment of the Water Use Act in 1973 and the promulgation of Mont. Code Ann. § 85-2-402, the burden of proof in a change lawsuit was on the person claiming the change adversely affected their water right, although the law was the same in that an adverse effect to another appropriator was not allowed. Holmstrom Land Co., Inc., v. Newlan Creek Water District, 185 Mont. 409, 605 P.2d 1060 (1979), rehearing denied, 185 Mont. 409, 605 P.2d 1060 (1980), following Lokowich v. Helena, 46 Mont. 575, 129 P. 1063 (1913); Thompson v. Harvey, 164 Mont. 133, 519 P.2d 963 (1974)(plaintiff could not change his diversion to a point upstream of the defendants because of the injury resulting to the defendants); McIntosh v. Graveley, 159 Mont. 72, 495 P.2d 186 (1972)(appropriator was entitled to move his point of diversion downstream, so long as he installed measuring devices to ensure that he took no more than would have been available at his original point of diversion); Head v. Hale, 38 Mont. 302, 100 P. 222 (1909)(successors of the appropriator of water appropriated for placer mining purposes cannot so change its use as to deprive lower appropriators of their rights, already acquired, in the use of it for irrigating purposes); Gassert v. Noyes, 18 Mont. 216, 44 P. 959 (1896)(after the defendant used his water right for placer mining purposes the water was turned into a gulch, whereupon the plaintiff appropriated it for irrigation purposes; the defendant then changed the place of use of his water right, resulting in the water no longer being returned to the gulch - such change in use was unlawful because it absolutely deprived the plaintiff of his subsequent right).

The DNRC in administrative rulings has held that a water right in a change proceeding is defined by actual beneficial use, not the amount claimed or even decreed. In the Matter of Application for Change Authorization No. G(W)028708-411 by Hedrich/Straugh/Ringer, December 13, 1991, Final Order ; In the Matter of Application for Change Authorization No.G(W)008323-g76L by Starkel/Koester, April 1, 1992, Final Order.

A key element of an evaluation of adverse effect to other appropriators is the determination of historic consumptive use of water. Consumptive use of water may not increase when an existing water right is changed. (In the Matter of Application to Change a Water Right No. 40M 30005660 By Harry Taylor II And Jacqueline R. Taylor, Final Order (2005); In The Matter of Application to Change a Water Right No. 40A 30005100 by Berg Ranch Co./Richard Berg, Proposal For Decision (2005) (Final Order adopted findings of fact and conclusions of law in proposal for decision); In the Matter of Application to Change a Water Right No. 411 30002512 by Brewer Land Co, LLC, Proposal For Decision (2003) (Final Order adopted findings of fact and conclusions of law in proposal for decision).)

In a change proceeding, the *consumptive* use of the historical right has to be determined:

In a reallocation [change] proceeding, both the actual historic consumptive use and the expected consumptive use resulting from the reallocation [change] are estimated. Engineers usually make these estimates.

With respect to a reallocation [change], the engineer conducts an investigation to determine the historic diversions and the historic consumptive use of the water subject to reallocation [change]. This investigation involves an examination of historic use over a period that may range from 10 years to several decades, depending on the value of the water right being reallocated [changed].

....

When reallocating [changing] an irrigation water right, the quantity and timing of historic consumptive use must be determined in light of the crops that were irrigated, the relative priority of the right, and the amount of natural rainfall available to and consumed by the growing crop.

....

Expected consumptive use after a reallocation [change] may not exceed historic *consumptive* use if, as would typically be the case, other appropriators would be harmed. Accordingly, if an increase in consumptive use is expected, the quantity or flow of reallocated [changed] water is decreased so that actual historic consumptive use is not increased.

## 2 Water and Water Rights at § 14.04(c)(1).

The applicant in a change proceeding in Montana must prove the historic beneficial use of the water to be changed, no matter how recently the water right was decreed in Montana's adjudication. Although since Montana started

its general statewide adjudication there is no Montana Supreme Court case on point to support the conclusion that even water rights as decreed in final decrees will be limited in change proceedings to their historical use, that conclusion is supported by the case of McDonald v. State, 220 Mont. 519, 722 P.2d 598 (1986). As a point of clarification, a claim filed for an existing water right in accordance with Mont. Code Ann. § 85-2-221 constitutes *prima facie* proof of the claim only for the purposes of the adjudication pursuant to Title 85, Chapter 2, Part 2. The claim does not constitute *prima facie* evidence of historical use for the purposes of a change in appropriation proceeding before the Department under Mont. Code Ann. § 85-2-402.

In the instant case the only evidence of historic use is the abstract of claim and the assertion by the Applicant that he will be “using no more water than has been used historically.” Applicants attempt to show the volume historically used by simply multiplying the claimed flow rate times the claimed period of use is not availing. There is no indication of the volumes of water actually historically used for irrigation. (Finding of Fact Nos. 7 – 10)

“Absent quantification of annual volume historically consumed, no protective condition limiting annual volume delivered can be placed on a Change Authorization, and without such a condition, the evidence of record will not sustain a conclusion of no adverse effect to prior . . . appropriators.” *In the Matter of the Application for Change of Appropriation water rights Nos. 101960-41S and 101967-41S by Keith and Alice Royston* (1989) conclusion of law No. 8. Applicant has not introduced sufficient evidence to determine annual volume historically consumed. Without some evidence of the volume of water actually historically used for irrigation it is impossible for the Hearing Examiner to determine whether this proposed change will result in an expansion of the water right.

5. Applicant has not identified any other water users in the vicinity of the proposed change that may be adversely affected should the change be granted. Applicant only makes vague generalizations that there will be no impact on other water users or that the proposed change will be beneficial to other users and other resource values. (Finding of Fact Nos. 12, 13) The

applicant for a change of appropriation right has the burden as to the nonexistence of adverse impact. *Matter of Application for Change of Appropriation Water Rights Nos. 101960-41S and 101967-41S by Royston*, 249 Mont. 425, 428, 816 P.2d 1054, 1057 (1991). Mont. Code Ann § 85-2-402 (2) provides that the Department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the proposed change will not “adversely affect the use of the existing water rights of other persons.”

By a preponderance of the evidence is meant such evidence, as when weighted with that opposed to it, has more convincing force and from which it results that the greater probability of truth lies therein. This means that *if no evidence were given on either side of an issue, your finding would have to be against the party asserting that issue*. In the event that evidence is evenly balanced so that you are unable to say that the evidence of either side of an issue preponderates, that is, has the greater convincing force, then your findings on that issue must be against the person who has the burden of proving it.

*Ekwortzel v. Parker* 156 Mont. 477, 484-485, 482 P.2d 559, 563 (1971) (quoting with approval District Court’s Jury Instruction No. 2) (emphasis added)

The Applicant in this matter, having not even identified other water users who may be affected, has failed to clear the evidentiary hurdle necessary for the Department to determine that the change application will not adversely affect the use of the existing water rights of other persons. Applicant has not proven by a preponderance of the evidence that the proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons.

### **Means of Diversion**

5. Applicant does not propose to alter the existing means of diversion. McDonald Ditch and headgate will continue to be used and water will be pumped from the existing ditch for irrigation. Applicant’s description of the means of diversion is reasonable. Applicant has proven by a preponderance of the evidence that the proposed means of diversion are adequate. (Finding of Fact Nos. 13, 14)

## **Beneficial Use**

6. Applicants proposal to utilize the water under this change authorization for irrigation is a recognized beneficial use. However, an element of beneficial use is that the amount of water used be the minimum amount necessary for the beneficial use and that the water is used without waste. E.g. *Bitterroot River Protective Ass'n, Inc. v. Siebel*, 326 Mont. 241, 108 P.3d 518 (2005). See also *Custer v. Missoula Public Service Co.*, 91 Mont. 136, 6 P.2d 131 (1931). In the instant matter, the applicant is proposing to utilize a flow rate of 58 miner's inches up to a total annual volume of approximately 439.14 acre feet to irrigate 22 acres of land. That equates to nearly twenty acre feet of water for each acre irrigated – an amount unheard of in this Hearing Examiners experience. Applicant attempts to justify this by stating that “five acres of the sprinkled area is a reclaimed gravel pit. . . . Because this area was previously a gravel pit, in need five times the normal amount of water ...” Assuming, arguendo, that such a statement is true, there would then remain 17 acres which are not an old gravel pit receiving the twenty acre feet of water per acre. The Montana Supreme Court has stated that “[t]he quantum of water reasonably necessary for irrigation is not definitely regulated by statute, and the rule has generally been observed by the courts, in fixing the amount required for economical use, to allow one miners’ inch per acre, *unless evidence discloses that a greater or less amount is required.*” *Worden v. Alexander*, 108 Mont. 208, 90 P.2d 160 (1939) (citations omitted) (emphasis provided). However, the Court has also noted that “[t]he question of the amount of water necessary per acre for irrigation is one of fact for the court or jury, and can never be considered a question of law for the courts.” *Tucker v. Missoula Light & Railway Co.*, 77 Mont. 91, 250 P. 11 (1926). The Department has also addressed the quantity of water required for irrigation and found, for example, that 25 acre feet of water to irrigate 5 acres to be excessive. *In the Matter of Application for Beneficial Water Use Permit No. 9757-s76K by Robert J. Shottliff and Alfred J. Haugh*, Proposal for Decision (1978) (*affirmed*, Final Decision). Without further explanation or evidence this Hearing Examiner can not conclude that 439.14 acre feet of water applied to 22 acres of land for the purpose of irrigation is not wasteful. Applicant has

not proven by a preponderance of the evidence that the proposed use is a beneficial use. (Finding of Fact Nos. 17, 18)

**Possessory Interest**

7. Applicant has proven by a preponderance of the evidence that he has a possessory interest in the property where the water is to be put to beneficial use.

**WHEREFORE**, based upon the foregoing Findings of Fact and Conclusion of Law, the Hearing Examiner makes the following:

**FINAL ORDER**

Application to Change a Water Right No. 43D-30005215 by Paul A. Pilati is **DENIED**.

**NOTICE**

A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under the Montana Administrative Procedure Act (Title 2, Chapter 4, Mont. Code Ann.). A petition for judicial review under this chapter must be filed in the appropriate district court within 30 days after service of the final order. (Mont. Code Ann. § 2-4-702)

If a petition for judicial review is filed and a party to the proceeding elects to have a written transcript prepared as part of the record of the administrative hearing for certification to the reviewing district court, the requesting party must make arrangements for preparation of the written transcript. If no request for a written transcript is made, the Department will transmit only a copy of the audio recording of the oral proceedings to the district court.

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Dated this 30<sup>th</sup> day of May, 2008.

/Original signed by David A Vogler/

David A. Vogler  
Hearing Examiner  
Department of Natural Resources  
and Conservation  
Water Resources Division  
P.O. Box 201601  
Helena, Montana 59620-1601

### **CERTIFICATE OF SERVICE**

This certifies that a true and correct copy of the FINAL ORDER was served upon all parties listed below on this 30<sup>th</sup> day of May, 2008 by first-class United States mail.

PAUL A PILATI  
PO BOX 1010  
RED LODGE, MT 59068

LARRY D LULOFF  
31 STORMITT BUTTE RD  
ROBERTS, MT 59070

Cc:  
DNRC, BILLINGS REGIONAL OFFICE  
AIRPORT BUSINESS PARK  
1371 RIMTOP DRIVE  
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/Original signed by Jamie Price/  
Jamie Price, Hearings Assistant  
Hearings Unit, (406) 444-6615